IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 13466 of 2006

DATED: 24.8.2006

Between:

V.K.V.Reddy **petitioner**

And

The Regional Manager,
APSRTC, Tirupati and others **Respondents**

THE HON'BLE SRI JUSTICE N.V.RAMANA

–

–

WRIT PETITION NO. 13466 of 2006

ORAL ORDER:

The present writ petition is filed questioning the proceedings issued by the third respondent-Depot Manager dated 27.5.2006 retiring the petitioner from service on medical grounds in terms of Clause 6 (A) of APSRTC Employees (Service) Regulations, 1967.

The brief facts of the case are as under.

The petitioner is employed in the respondent corporation as Driver. While so, he was affected with paralysis to right side of his body and underwent treatment at S.V. Institute of Medical Sciences, Nizams Institute of Medical Sciences and APSRTC Hospital, Tirupati during November, 2002. After recovery, the hospital authorities issued medical certificate recommending for entrustment of light duties. Accordingly, petitioner made a representation and in turn he was assigned with light duties. Thereafter, the petitioner under went treatment from 28.5.2005 to 01.06.2005 and the Medical Officer, APSRTC Dispensary, Tirupati recommended for allotment of sedentary work. On reporting to duty, the third respondent instructed him to join the duties as Driver. Questioning the action of the respondents in not allotting the light duties, petitioner filed W.P. No.

12284 of 2005 and the same was disposed of by order dated 21.6.05 directing the respondents to consider his representation and pass appropriate orders. The petitioner alleges that he was not allowed to join the duty and instructed to appear before the Senior Medical Officer, APSRTC Hospital, Tarnaka. Subsequently, the third respondent issued proceedings dt 25.9.2005 placing the petitioner under forced leave pending finalisation of the case. Questioning the said proceedings, petitioner filed W.P. No. 28117 of 2005 and the same was disposed of by order dated 7.3.2006 directing the petitioner to make a representation for providing alternative employment. According, petitioner made a representation dated 29.3.2006 requesting the respondents to provide alternative employment. In turn, respondents issued impugned proceedings dated 27.5.2006 retiring the petitioner on medical grounds. Hence, the present writ petition.

Learned counsel for petitioner submitted that the once the petitioner is declared medically unfit to perform the duties of Driver, the respondents are bound to provide him alternative employment under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short the Act). It is further submitted that the respondents are making the petitioner to run from poll to post by passing orders one after the other and are not complying the mandatory provisions of the Act.

A counter affidavit is filed by the Law Officer of the respondent corporation stating that the petitioner was declared as medically unfit for the post of driver on the ground of "*mild residual disability*" on 17.9.2005 by the Senior Medical Officer, Tarnaka, Hyderabad. That the representation of the petitioner was considered in terms of the

orders of this Court in W.P. No. 28117 of 2005 and vide proceedings dated 27.5.2006 he was informed that he is entitled for alternative post and that 34 drivers who were retired on similar grounds were waiting for alternative employment. It is further stated that the disability is a "mild residual disability" is not a disability within the provisions of the Act and the petitioner is not entitled for benefit under the provisions of Section 47 of the Act. Therefore, the petitioner was kept in the seniority list for appointment under 10% quota in terms of the circulars of the corporation.

The petitioner filed a detailed reply affidavit to the counter affidavit filed by the respondent corporation denying the averment that mild residual disability is not a disability within the provisions of Act. The petitioner has placed reliance on sections 2 (i), 2 (o) and 2 (e) of the Act to establish that the mild residual disability is a disability under the provisions of the Act and petitioner is entitled to the benefits of the Act.

Admittedly, the petitioner was declared unfit for performing the duties of Driver by the Senior Medical Officer, Tarnaka, Hyderabad on the ground of "mild residual disability" and vide proceedings dated 27.5.2006 he was retired on medical grounds. Now for the first time, respondents in their counter affidavit contend that the "mild residual disability is not a disability under the Act and petitioner is not entitled to the benefits under the Act,1995. Thus, the respondents are taking dual stand in the counter affidavit, inasmuch on the one hand they retire the petitioner on medical grounds and on the other hand contend that the disability of the petitioner is not covered under the provisions of the Act. The impugned proceedings indicate that the Personnel Officer,

Tirupati vide proceedings dated 13.4.2006 has given a directive that it is not possible to provide alternative employment to petitioner since 34 drivers retired on similar grounds are waiting for their turn for alternative employment. Whereas, in the counter affidavit it is contended that petitioner is not eligible to benefits under Act, 1995. If it is the case of the respondent corporation that the case of the petitioner does not fall within the definition of "disability" prescribed under the Act, 1995, and petitioner is not entitled to alternative employment they ought to have mentioned the same in the impugned proceedings. More so, the learned Standing Counsel for respondent corporation, at the time of hearing submitted that the respondents are considering the cases of candidates who had approached this Court and obtained Court orders.

For the foregoing reasons and having regard to the fact that the petitioner was declared unfit to perform the duties of driver by Senior Medical Officer of the respondent corporation by proceedings dated 17-9-2005 and accordingly retired on medical grounds by proceedings dated 27.5.2006 he is entitled to seek alternative employment in terms of Section 47 of the Act, 1995. Hence, this Court deem it appropriate to dispose of the writ petition with the following direction:

The respondents are directed to provide suitable alternative employment to the petitioner in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 by protecting his pay and other service conditions.

Accordingly, the writ petition is disposed of. No costs.

_____

N.V.RAMANA,J

DATE: 24.8.2006
TVK

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 13466 of 2006

DATED: 24.8.2006